

**STATEMENT OF
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UNDER SECRETARY FOR NATURAL RESOURCES
AND ENVIRONMENT
BEFORE THE
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS
SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
CONCERNING HEALTH OF TREE PLANTING GUEST WORKERS**

March 1, 2006

Mr. Chairman and Members of the Subcommittee

Thank you for the opportunity to testify before you today on the role of the Forest Service in protecting the health and welfare of foreign guest workers carrying out service contract work on national forest land. The Department of Agriculture and the Forest Service are committed to the safety and health of visitors and workers on National Forests, ~~We have~~ and will continue to act quickly to address any problem that may arise in these areas.

Background

Federal law allows foreign citizens to temporarily come to the United States to perform jobs where U.S. workers may be in short supply. The law establishes categories for temporary work visas: H-2A for agricultural workers and H-2B for nonagricultural, nonprofessional jobs such as travel agents, restaurant workers, janitors and forestry workers. The focus of my testimony today is on the requirements applicable to the employment of H-2B workers. There is a 66,000 person per year limit on the number of foreign workers who may receive H-2B status and this limit is regularly reached early in the year. H-2B workers already working in this country do not count against the current year cap so the actual number of H-2B foreign guest workers in this country could be much higher. About 15,000 to 20,000 are forestry workers.

Several federal and state agencies have responsibilities for the many aspects of the temporary guest worker program. ~~The Department of Homeland Security (DHS) and the Department of Labor (DoL) have primary oversight for the program. Other agencies, including the Forest Service, are involved where H-2B guest workers are employed by contractors.~~

In order for employers—including potential Forest Service contractors—to hire foreign guest workers they must get a certification from DoL stating that qualified workers are not available in the U.S. and that the foreign worker's employment will not adversely

affect wages and working conditions of similarly employed U.S. workers. The employer then petitions DHS to hire guest workers.

Additionally, the employer seeking to hire foreign guest workers must offer at least the prevailing wage for the occupation in the area of intended employment. Worker protection provisions that apply to U.S. workers also cover foreign guest workers. Workers may file complaints under these worker protection laws with local DoL Wage and Hour Division offices.

The Federal worker protection laws that apply to H-2B forestry workers are: 1) the Migrant and Seasonal Agricultural Worker Protection Act provides requirements for housing, transportation and working conditions for migrant and seasonal workers; 2) the Service Contract Act provides for minimum wages and other benefits for those workers under federal service contracts; 3) the Occupational Safety and Health Act contains specific workplace safety requirements; and 4) the Fair Labor Standards Act provides minimum wage, overtime, and child labor requirements. DoL is responsible for enforcing these laws and has agreements with some states such as California to administer and enforce a state occupational safety and health program for the Department. In addition, states will enforce their own labor requirements if these offer greater protection to foreign guest workers than the federal requirements.

Forest Service Responsibilities and Actions Taken

that apply to H2-B workers

The Forest Service has an important role in implementing these laws because forestry services contractors often hire foreign guest workers to do thinning, tree planting, brush clearing and other types of work on national forests. Safety and respectful treatment are core values in the way the Forest Service conducts day to day business, and the Forest Service is often the agency with the most direct contact with foreign guest workers. I commend the Sacramento Bee for bringing attention to the issues that some foreign guest workers face as they perform work in this country. It is important that these issues do not escape the attention of the various agencies responsible and we have already taken action to strengthen our respective agency roles.

On November 18, 2005, the Chief of the Forest Service, Dale Bosworth, issued a letter to Agency leadership stating his expectations on what Forest Service Contracting Officers and inspectors must do when they recognize health and safety violations which present an imminent threat to workers such as not using appropriate safety apparel and equipment. When these situations occur, agency personnel must take action, just as they would with Forest Service employees. If contractor employees do not have appropriate safety apparel or equipment, the inspectors are not to let them work. The Chief also instructed them to document and report observed violations in the areas of safety, housing, transportation and wages to the appropriate oversight agency. He shared his expectation that documentation of violations should be a factor in evaluating future bids and awarding future contracts. Violators can be banned from future awards by the oversight agencies.

Chief Bosworth designated the Director of Acquisition Management in the Washington Office as the Forest Service contact with the appropriate staff of oversight agencies, DoL, OSHA and United States Citizenship and Immigration Service (USCIS). The Director has already met with OSHA and with the DoL Wage and Hour Division's Director of Enforcement Policy to discuss coordination and specific actions each agency can take to address the issues of health, safety, and wage payments concerning foreign guest workers.

Provisions and requirements developed by the oversight agencies within DoL and DHS to implement guest worker protection laws (the Migrant and Seasonal Agricultural Worker Protection Act, the Service Contract Act, the Fair Labor Standards Act, and the Occupational Safety and Health Act) were previously incorporated by general reference into the service contracts awarded by the Forest Service. On January 4, 2006, the Director of Acquisition Management issued mandatory clauses for Forest Service contracts, expressly stating these provisions and requirements. These clauses include specific language regarding camp facilities and personal protective equipment requirements and specific oversight agency requirements that employers of foreign guest workers must fulfill such as certification of adequate housing, proper documentation of the legal status of foreign workers, and properly registered and inspected vehicles for transportation. Adding the language directly into the service contracts is expected to produce two major results: 1) increase follow-up actions by Forest Service contract inspectors when health and safety violations are observed; and 2) provide greater ability to hold contractors accountable by enforcing language in the contracts.

The Director of Acquisition Management also required Regional Foresters and Station Directors to ensure every active tree planting and tree thinning contract was visited by the Contracting Officers on site within 3 weeks of the commencement of work. Based on these visits, the regions and stations will submit a report to the Washington Office regarding the status of housing, transportation and working conditions for employees of forestry contractors. If unacceptable conditions are observed the work will be suspended and a report will be made to the appropriate agency.

Coordination with the oversight agencies has been very productive. The Forest Service has provided the Wage and Hour Division and OSHA with a list of this year's projects that could involve foreign guest workers. The agencies have also exchanged point of contact information for our respective field organizations. As a result, for example, a Forest Service contract inspector in Oregon has the point of contact information for the OSHA and Wage and Hour Division in their area to report potential violations of the law.

The Wage and Hour Division and CAL-OSHA have conducted training in California for Forest Service Contract Administrators and private sector contractors concerning legal requirements regarding the employment of H-2B workers. OSHA and Wage and Hour are developing training material to raise awareness of "red flags" that may indicate problems with the employment of H-2B workers. The Forest Service is also providing this training material to employees involved with foreign guest workers.

Summary

The Department and the Forest Service are committed to the health and safety for all visitors and workers on the National Forests and Grasslands, and that includes foreign guest workers. We will continue to closely coordinate with the oversight agencies responsible for administering this program to ensure foreign guest workers will have safe and healthy working and living conditions.

This concludes my statement, I would be happy to answer any questions that you may have.